

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

BRIAN MICHAEL BRUESKE,
Debtor

DOLPHIN CAPITAL CORPORATION,
Plaintiff,

vs.

BRIAN MICHAEL BRUESKE,
Defendant

Case No. 04-41253

Chapter 7

COMPLAINT

Adversary Proceeding No. _____

BACKGROUND

Plaintiff brings this action to establish and fix the amount of its unsecured claim against the Defendant and Debtor, Brian Michael Brueske, which arose from the damages caused by his actual, intentional, fraud and his knowing, intentional, and fraudulent misrepresentations. Plaintiff also seeks to have its debt declared non-dischargeable because it arose from Plaintiff's extension of credit based upon false pretenses, actual fraud and solely as a result of Defendant's false representations.

PARTIES AND JURISDICTION

1. Plaintiff, Dolphin Capital Corporation ("Dolphin"), is a Massachusetts corporation with a principal place of business located at 2061 North Morley Street, Moberly, Missouri.

2. Defendant, Brian Michael Brueske, is an individual with a principal residence located at 18841 Albany Street, Elk River, Minnesota.

3. On March 10, 2004, Defendant filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.

4. The matters before this Court are core proceedings pursuant to 28 U.S.C. §§ 157(b)(2)(B) and 157(b)(2)(I). The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157(a), 157(b)(1), 157(b)(2) and 1334(b). Venue is proper pursuant to 28 U.S.C. §1409(a).

FACTUAL BACKGROUND

5. At all relevant times, Defendant was the owner and president of Aqua Pure Solutions Metro, Inc. (“Aqua Pure”), a Minnesota corporation with a principal place of business at 6957 Highway 10, N.W., Suite 110, Ramsey, Minnesota.

6. At all relevant times, Aqua Pure was engaged in the leasing, distribution, and service of water coolers to a variety of commercial enterprises. As part of this business, Aqua Pure executed Rental/Service Agreements (“RSA”) with its customers requiring, among other things, regular payments to Aqua Pure.

7. At all relevant times, Aqua Pure was a privately held corporation, owned and controlled by the Defendant.

8. On February 9, 2001, Plaintiff and Aqua Pure, by and through the Defendant, its sole shareholder and President, executed a Private Label Program Agreement (the “Agreement”) whereby Plaintiff agreed to provide financing to Aqua Pure in exchange for an assignment by Aqua Pure of certain RSAs under certain terms and conditions. A true and accurate copy of the Agreement is annexed hereto as Exhibit A.

9. In accordance with the terms of the Agreement, each time Aqua Pure assigned an RSA to Plaintiff, Aqua Pure made the following representations, among others, concerning the RSA to be assigned (the “Representations”):

- a. “the leases and all related instruments thereto as genuine and enforceable;”
- b. “the leases are the only ones executed with respect to said equipment;”
- c. “there are no outstanding encumbrances of any nature whatsoever on said equipment;”
- d. “the equipment leased under the leases has been delivered to, accepted by and is in a condition satisfactory to Lessees;” and
- e. Aqua Pure “has not entered into any agreement or taken any action with any lessee which provides any credit against such lease payments.”

10. In the event that any of the Representations were found to be false, Aqua Pure would be required to pay to Plaintiff immediately the present value of all payments remaining under the RSAs assigned to Plaintiff.

11. Defendant, on behalf of Aqua Pure, knowingly and intentionally made false representations to Plaintiff in connection with at least eleven RSAs assigned to Plaintiff at the time they were assigned to Plaintiff.

12. To wit, the Representations made by Defendant, on behalf of Aqua Pure, at the time that each of the following RSAs acquired by Plaintiff were false for the reasons noted below:

- a. RSAs 29431, 33583, 33584, 37867, 40162 and 40163 between Aqua Pure and Park Nicollet Health Services had been previously assigned to another creditor, Wells Fargo;
- b. In connection with an RSA between Aqua Pure and Begley Enterprises, Inc., Aqua Pure removed the lease equipment from the customer’s premises and Defendant instructed the customer to cease making payments under the RSA.

Therefore, the equipment leased under this RSA was not delivered to, or accepted by, the lessee and full credit had been granted to the lessee;

- c. Defendant forged the customer's signature on RSA 38543 between Aqua Pure and Erickson Mediation Institute, precluding it from being genuine or enforceable;
- d. In connection with an RSA between Aqua Pure and Harmon, Inc., Defendant immediately cancelled the RSA without advising Plaintiff. Therefore, this RSA was not enforceable and full credit had been granted to the lessee;
- e. In connection with RSAs 34566 and 33904 between Aqua Pure and Health Partners, Inc., Defendant failed to deliver the leased equipment to the customer and instructed the customer not to make any payments under the RSA. Therefore, the equipment leased under this RSA was not delivered to, or accepted by, the lessee and full credit had been granted to the lessee.

13. Aqua Pure defaulted under the terms of the Agreement as a result of, among other things, Defendant's false representations made in connection with these eleven RSAs.

14. Prior to Defendant's bankruptcy proceeding, Plaintiff initiated a law suit in the Circuit Court of Randolph County, Missouri, Case No. 03-CV-176391, seeking to recover all amounts due under the Agreement from Aqua Pure and also seeking an award of damages against the Defendant for the damage he caused Plaintiff by his actual fraud and false representations. A true and accurate copy of the First Amended Petition and the Second Amended Petition filed in this action are annexed hereto as Exhibits B and C, respectively.

15. At the time of Defendant's bankruptcy filing, Plaintiff's claims against Defendant had not been adjudicated and no judgment had been entered in this lawsuit.

16. Nevertheless, Defendant acknowledged the existence and legitimacy of Plaintiff's claims against him personally by listing those claims in his Schedules as non-contingent, liquidated, and undisputed.

COUNT I

(To Establish and Fix Plaintiff's Claims Against Defendant as Allowed, Unsecured Claims Arising from his Fraud and Misrepresentations)

17. As President and owner of Aqua Pure, Defendant had complete authority and control to act on Aqua Pure's behalf.

18. In this capacity, Defendant entered into the Agreement and executed all documentation necessary to affect the assignment to Plaintiff of RSAs as contemplated by the Agreement.

19. Accordingly, Defendant was the individual who made all of the Representations to Plaintiff as required under the Agreement.

20. In connection with the eleven RSAs discussed in paragraph 12 above, Defendant was the individual who made all of the Representations to Plaintiff.

21. As to each such RSA, one or more of these Representations were false.

22. At the time he made these Representations, Defendant knew that one or more of them were false.

23. At the time he made these Representations, Defendant knew that if he disclosed the truth to Plaintiff then Plaintiff would not extend credit to Aqua Pure.

24. Nevertheless, Defendant intentionally made false representations concerning these eleven RSAs, and possibly others, for the purpose of having the Plaintiff rely upon them and extend credit to Aqua Pure.

25. Defendant's fraud and fraudulent misrepresentations caused actual harm and damages to Plaintiff.

26. Accordingly, Plaintiff is entitled to a judgment against Defendant arising from his fraud and fraudulent misrepresentations, in an amount to be determined by the Court.

27. Any judgment so rendered should constitute an allowed, unsecured claim held by Plaintiff against Defendant in his bankruptcy proceeding.

COUNT II
(Declaration Under 11 U.S.C. § 523(a)(2)(A))

28. As described above, Plaintiff's claim against Defendant arises from money, services and credit he obtained on behalf of Aqua Pure by false pretenses, false representations, and actual fraud in connection with at least eleven RSAs.

29. In connection with these eleven RSAs, and possible others, Plaintiff extended money, services and credit to Aqua Pure.

30. In connection with these eleven RSAs, and possibly others, Defendant, on behalf of Aqua Pure, made the Representations required by the Agreement.

31. In connection with these eleven RSAs, and possibly others, these Representations were false and Defendant knew them to be false.

32. In connection with the credit it extended to Aqua Pure for these eleven RSAs, and possibly others, Plaintiff relied on the false pretenses, fraudulent misrepresentations, and actual fraud perpetrated by Defendant.

33. Accordingly, Plaintiff's claim against Defendant for the damages caused by his false pretenses, fraudulent misrepresentations, and actual fraud should be excluded from any discharge of debts he may receive.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff, Dolphin Capital Corporation, requests this Court to grant the following relief:

1. Enter judgment in favor of Plaintiff, Dolphin Capital Corporation, and against Defendant, Brian Michael Brueske, under Count I in an amount to be determined by the Court;
2. Declare that Plaintiff, Dolphin Capital Corporation, holds an allowed, unsecured claim against Defendant, Brian Michael Brueske, in the amount entered against him under Count I;
3. Enter judgment in favor of Plaintiff, Dolphin Capital Corporation, and against Defendant, Brian Michael Brueske, under Count II by declaring that the allowed, unsecured, judgment claim obtained by Plaintiff under Count I is exempt from any discharge Defendant may receive in connection with his bankruptcy proceeding; and
4. For such other relief as this Court deems appropriate.

ANTHONY OSTLUND & BAER, P.A.

Dated: June 14, 2004

/s/ Court J. Anderson

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